

Member of California
and Oregon State Bars

PETER H. SMITH
ATTORNEY AT LAW
1535 J STREET, SUITE A
MODESTO, CALIFORNIA 95354

Telephone (209) 579-9524
Facsimile (209) 579-9940

March 31, 2008

TTAB

U.S. Patent & Trademark Office
Trademark Trial & Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

78 229875

Re: Opposition No. 91162780 and Counterclaim for Cancellation
Applicant/Petitioner: Keith Cangiarella
Opposer/ Respondent: Message In A Bottle, Inc.

Ladies/Gentlemen:

I am enclosing the original and one copy of the first page of a Notice of Reliance in the above-referenced opposition. Please file the original and return the first page of the copy to me, marked with your filing stamp.

Very truly yours,



Peter H. Smith

PHS/lmb
Enclosures

cc: Mr. Roger Rojas, Message In A Bottle, Inc.



03-31-2008

Use this page to stamp + return.
JTS Smith

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>In the Matter of Trademark Application Serial No. 78/229,875 Mark: MESSAGE IN A BOTTLE</p> <p>MESSAGE IN A BOTTLE, INC., a California corporation, Opposer,</p> <p>v.</p> <p>KEITH CANGIARELLA, Applicant.</p> <p>-----</p> <p>In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE</p> <p>KEITH CANGIARELLA, Petitioner,</p> <p>v.</p> <p>MESSAGE IN A BOTTLE, INC., Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p>
---	--

Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF RELIANCE

Notice is hereby given that the party identified below offers the attached documents into evidence, and will rely upon them, their relevance to the present proceeding being as noted below.

I. Certified copy of Opposer's registration, in duplicate, pursuant to TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark
Application Serial No. 78/229,875
Mark: MESSAGE IN A BOTTLE

MESSAGE IN A BOTTLE, INC.,
a California corporation,

Opposer,

v.

KEITH CANGIARELLA,
Applicant.

Opposition No. 91162780 and
Counterclaim for Cancellation

In the Matter of Trademark
Registration No. 2,243,269
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,
Petitioner,

v.

MESSAGE IN A BOTTLE, INC.,
Respondent.

Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF RELIANCE

Notice is hereby given that the party identified below offers the attached documents into evidence, and will rely upon them, their relevance to the present proceeding being as noted below.

- I. Certified copy of Opposer's registration, in duplicate, pursuant to TTAB

Rule 2.122(d), marked as Exhibit A, showing that the mark MESSAGE IN A BOTTLE was registered for a term of 10 years from May 4, 1999, the Section 8 and 15 affidavit having been filed, and that title to the registration is in Message In A Bottle, Inc., a California corporation. The relevance of this document to the present proceeding is that it shows that a prior registration existed at the time of the filing of the Applicant's pending application for the same mark, and that the prior registration is owned by Opposer Message In A Bottle, Inc.

II. Official Records pursuant to TTAB Rule 2.122(e).

A. Certified copy of Stanislaus County Clerk Fictitious Business Name Statement with file stamp date of January 27, 1999, marked as Exhibit B, showing that the original owner of the registration attached as Exhibit A, Roger Rojas, along with Adriana Rojas, filed a statement then stating that they were doing business as "Message in a Bottle", that they had commenced business under that name on January 16, 1999, and that the type of their business was "message services", the relevance being that this is the date of first use claimed by Roger Rojas in his application to register MESSAGE IN A BOTTLE for the same type of services.

B. Certified copy of Stanislaus County Clerk Fictitious Business Name Statement with file stamp of October 23, 2003, marked as Exhibit C, showing that Gold Shells, Inc., the assignee of the registration attached as Exhibit A filed a statement then stating that it was doing business as "Message in a Bottle", the

relevance being the continuity of use of this name as between Roger Rojas and the corporation to which he assigned the registration for MESSAGE IN A BOTTLE.

C. Certified copy from California Secretary of State of Articles of Incorporation of Gold Shells, Inc., with file stamp of July 7, 2003, marked as Exhibit D, the relevance being to show that this corporation was formed as an entity prior to the time that the registration attached hereto as Exhibit A was assigned to that corporation by Roger Rojas, with Roger Rojas and Adriana Rojas as its directors.

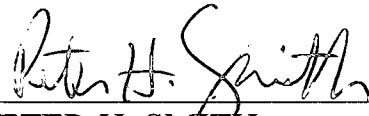
D. Certified copy from California Secretary of State of Certificate of Amendment of Articles of Incorporation with file stamp of July 19, 2007, marked as Exhibit E, the relevance being to show that Gold Shells, Inc., changed its name to Message In A Bottle, Inc., and amended its articles to show the new name.

III. Discovery Responses pursuant to TTAB Rule 2.120(j)(3)(i).

A. Applicant's Answer to Opposer's Request for Admissions from Applicant, said answer being dated August 12, 2005, marked as Exhibit F.

B. Applicant's Responses to Opposer's Revised First Set of Interrogatories, said responses being dated April 5, 2006, marked as Exhibit G.

Dated: March 31, 2008



PETER H. SMITH

Attorney for Opposer Message In A
Bottle, Inc.

1535 J Street, Suite A
Modesto, CA 95354
(209) 579-9524

Certificate of Service

I hereby certify that a copy of the foregoing NOTICE OF RELIANCE was mailed first-class mail, postage prepaid, to Applicant Keith Cangiarella, in propria persona, at 331 N. Harrington Drive, Fullerton, California 92831, on March 31, 2008.

Dated: March 31, 2008

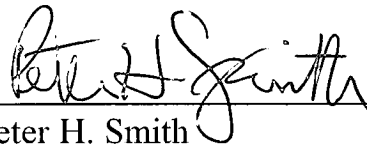

PETER H. SMITH

CERTIFICATE OF EXPRESS MAILING UNDER 37 CFR §2.198

Mark: MESSAGE IN A BOTTLE
Registration No.: 2,243,269
Opposition No.: 91162780
Mailing Date: March 31, 2008
Name of party filing paper: Message In A Bottle, Inc.
Type of paper being filed: Notice of Reliance

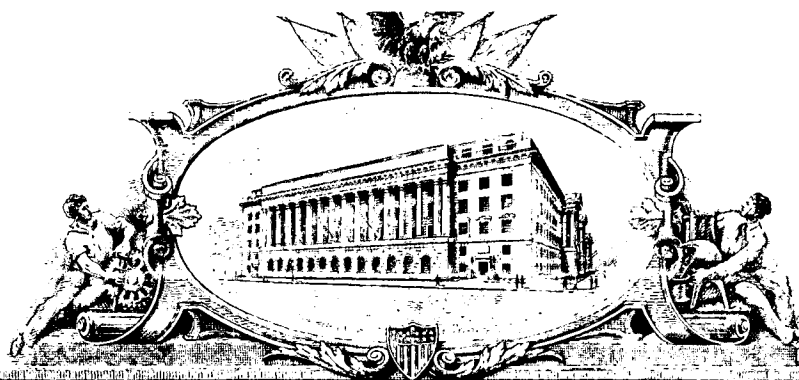
Express Mail Mailing Label Number: EU182639197US
Date of Deposit: March 31, 2008

I hereby certify that the above-identified Notice of Reliance, which is attached, is being deposited on March 31, 2008, with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §2.198 in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.

A handwritten signature in cursive script, appearing to read "Peter H. Smith", is written over a horizontal line.

Peter H. Smith
Date: March 31, 2008

1684477



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

February 20, 2008

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,243,269 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *May 04, 1999*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

MESSAGE IN A BOTTLE, INC.

A CA CORP

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**

T. LAWRENCE

Certifying Officer

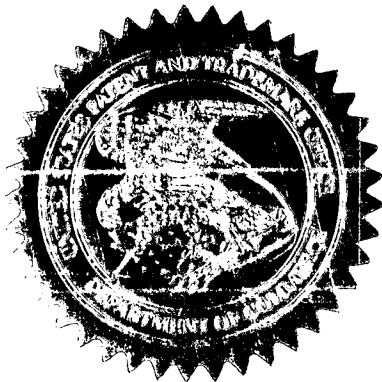


EXHIBIT A

Int. Cl.: 38

Prior U.S. Cls.: 100, 101, and 104

Reg. No. 2,243,269

United States Patent and Trademark Office

Registered May 4, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

MESSAGE IN A BOTTLE

**ROJAS, ROGER (UNITED STATES CITIZEN)
725 PARADISE ROAD
MODESTO, CA 95351**

**FOR: RECEIVING COMMUNICATIONS
FROM OTHERS, RECORDING SUCH COMMU-
NICATIONS IN WRITTEN OR PRINTED
FORM, AND TRANSMITTING SUCH COMMU-
NICATIONS TO OTHERS, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).**

**FIRST USE 1-16-1999; IN COMMERCE
1-16-1999.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MESSAGE", APART FROM
THE MARK AS SHOWN.**

SN 75-226,521, FILED 1-6-1997.

RUSS HERMAN, EXAMINING ATTORNEY

STANISLAUS COUNTY CLERK FICTITIOUS BUSINESS NAME STATEMENT

P.O. Box 1670
1021 "I" Street, Suite 101
Modesto, CA 95353
(209) 525-5250

99 JAN 27 PM 1:34

KAREN MATHEWS, COUNTY CLERK

BY _____

DEPUTY

Wade Shawlee

NOTICE-THIS FICTITIOUS BUSINESS NAME STATEMENT **EXPIRES FIVE YEARS** FROM THE DATE IT WAS FILED. A NEW STATEMENT MUST BE FILED PRIOR TO THAT EXPIRATION DATE. **THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14400 ET SEQ., BUSINESS AND PROFESSIONS CODE).**

FILING FEE

\$27.00 FOR FIRST BUSINESS NAME ON STATEMENT
\$ 7.00 FOR EACH ADDITIONAL BUSINESS NAME FILED ON SAME STATEMENT AND DOING BUSINESS AT THE SAME LOCATION
\$ 7.00 FOR EACH ADDITIONAL OWNER IN EXCESS OF TWO OWNERS.

IF YOU ARE FILING YOUR STATEMENT BY MAIL, PLEASE INCLUDE A SELF-ADDRESSED, STAMPED ENVELOPE FOR RETURN OF YOUR RECORDS.

This statement was filed with the County Clerk on date indicated by file stamp above.

The following person (persons) is (are) doing business as: _____

(FICTITIOUS BUSINESS NAME)

(STREET ADDRESS-(DO NOT USE P.O. BOX))

(CITY)

(STATE)

(ZIP)

1. _____
(FULL NAME-TYPE/PRINT)

2. _____
(FULL NAME-TYPE/PRINT)

(RESIDENTIAL ADDRESS) (Do Not Use P.O. Box)

(RESIDENTIAL ADDRESS)

(CITY)

(STATE)

(ZIP)

(CITY)

(STATE)

(ZIP)

3. _____
(FULL NAME-TYPE/PRINT)

4. _____
(FULL NAME-TYPE/PRINT)

(RESIDENTIAL ADDRESS)

(RESIDENTIAL ADDRESS)

(CITY)

(STATE)

(ZIP)

(CITY)

(STATE)

(ZIP)

This business is conducted by: ☐ an Individual ☐ Individuals—Husband and Wife ☐ a General Partnership ☐ a Limited Liability Co
☐ a Limited Partnership ☐ a Corporation ☐ a Business Trust ☐ Co-Partners ☐ a Joint Venture
☐ an Unincorporated Association—other than a Partnership ☐ Other (Specify) _____

(if corporation, show state of incorporation)

The registrant commenced to transact business under the fictitious business name or names listed above on _____

The type of business being conducted _____

If registrant is not a corporation sign below:

If Registrant is a corporation or limited liability company, sign below:

Signed _____

Corporation or

Company Name

Signature of Officer _____

Typed or Printed _____

Type or Print

Officer's Name & Title _____

Business Phone: _____

RETURN ALL COPIES TO THE COUNTY CLERK

CERTIFICATION

I hereby certify that the foregoing is a correct copy of the original on file in my office.



KAREN MATHEWS, COUNTY CLERK

By _____

Wade Shawlee

#1



STANISLAUS COUNTY CLERK FICTITIOUS BUSINESS NAME STATEMENT

FILE NO. 03-2689

P. O. BOX 1670
1021 "I" Street, Suite 101
Modesto, CA 95353
(209) 525-5250

03 OCT 23 AM 10:14
STANISLAUS CO. CLERK-RECORDER

NOTICE—THIS FICTITIOUS BUSINESS NAME STATEMENT EXPIRES FIVE YEARS FROM THE DATE IT WAS FILED. A NEW STATEMENT MUST BE FILED PRIOR TO THAT EXPIRATION DATE. THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE OR COMMON LAW (SEE SECTION 14400 ET SEQ., BUSINESS AND PROFESSIONS CODE).

FILING FEE
\$30.00 FOR FIRST BUSINESS NAME ON STATEMENT
\$7.00 FOR EACH ADDITIONAL BUSINESS NAME FILED ON SAME STATEMENT AND DOING BUSINESS AT THE SAME LOCATION.
\$7.00 FOR EACH ADDITIONAL OWNER IN EXCESS OF TWO OWNERS.

BY Cheryl Westbrook
DEPUTY

IF YOU ARE FILING YOUR STATEMENT BY MAIL, PLEASE INCLUDE A SELF-ADDRESSED, STAMPED ENVELOPE FOR RETURN OF YOUR RECORDS.

This statement was filed with the County Clerk on date indicated by file stamp above.

The following person (persons) is (are) doing business as:

Message in a Bottle
(FICTITIOUS BUSINESS NAME)

725 Paradise Rd
(STREET ADDRESS—DO NOT USE P.O. BOX)

Modesto
(CITY)

CA
(STATE)

95351
(ZIP)

1. Gold Shells, Inc.
(FULL NAME—TYPE/PRINT)

725 Paradise Rd
(RESIDENTIAL ADDRESS) (Do not use P.O. Box)

Modesto CA 95351
(CITY) (STATE) (ZIP)

2. _____
(FULL NAME—TYPE/PRINT)

(RESIDENTIAL ADDRESS) (Do not use P.O. Box)

(CITY) (STATE) (ZIP)

3. _____
(FULL NAME—TYPE/PRINT)

(RESIDENTIAL ADDRESS) (Do not use P.O. Box)

(CITY) (STATE) (ZIP)

4. _____
(FULL NAME—TYPE/PRINT)

(RESIDENTIAL ADDRESS) (Do not use P.O. Box)

(CITY) (STATE) (ZIP)

This business is conducted by: ☐ an Individual ☐ Individuals—Husband and Wife ☐ a General Partnership ☐ a Limited Liability Co
☐ a Limited Partnership ☒ a Corporation ☐ a Business Trust ☐ Co-Partners ☐ a Joint Venture
☐ an Unincorporated Association—other than a Partnership ☐ Other (Specify) California Corporation
(if corporation, show state of incorporation)

The registrant commenced to transact business under the fictitious business name or names listed above on 8/1/03
(Date)

The type of business being conducted retail + wholesale sales

I declare that all information in this statement is true and correct. (A registrant who declares as true information, which he or she knows to be false, is guilty of a crime.)

If Registrant is not a corporation sign below:

Signed _____

Typed or Printed _____

Business Phone: _____

If Registrant is a corporation or limited liability company, sign below:

Corporation or Gold Shells, Inc.
Company Name

Signature of Officer Roger Rojas

Officer's Name & Title Roger Rojas CEO Gold Shells, Inc.

RETURN ALL COPIES TO THE COUNTY CLERK

CERTIFICATION

I hereby certify that the foregoing is a correct copy of the original on file in my office.



STANISLAUS CO. CLERK-RECORDER

By [Signature]

DISTRIBUTION: White—County Clerk Yellow—Registrant Pink—Newspaper Goldenrod—Tax Collector

State of California



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 3 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

_____, 2003



Kevin Shelley
Secretary of State

ARTICLES OF INCORPORATION

OF

**GOLD SHELLS, INC.,
a California corporation****ENDORSED - FILED**
in the office of the Secretary of State
of the State of California

JUL 7 2003

ARTICLE ONE: NAME**KEVIN SHELLEY
Secretary of State**

1.1. The name of this corporation shall be: **GOLD SHELLS, INC.**

ARTICLE TWO: PURPOSE

2.1. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the Corporations Code of the State of California.

ARTICLE THREE: AGENT FOR SERVICE OF PROCESS

3.1. The name of this corporation's initial agent for service of process is Jeffrey C. Cannon, Esq., who may be served at 1012 11th Street, Suite 103, Modesto, CA, 95354.

ARTICLE FOUR: STOCK

4.1. This corporation is authorized to issue only one (1) class of shares, which shall be designated "common" shares. Those shares authorized and issued as "common" shares shall be vested with voting rights at the rate of one vote per share.

4.2. The total number of such shares authorized to be issued is ten million (10,000,000) shares.

ARTICLE FIVE: DIRECTORS

5.1. The number of Directors is fixed at five (5).

The following initial Director(s) are herewith named:

ROGER ROJAS	725 Paradise Road Modesto, CA 95351
-------------	--

ADRIANA ROJAS	725 Paradise Road Modesto, CA 95351
---------------	--

ARTICLE SIX: INDEMNIFICATION OF DIRECTORS

6.1. The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability.

ARTICLE SEVEN: INDEMNIFICATION OF AGENTS

7.1. The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any act or omission to act giving rise to indemnification.

ARTICLE EIGHT: PREEMPTIVE RIGHTS

8.1. Each holder of common shares shall have full preemptive or preferential rights, as these rights are defined by law, to subscribe for or purchase that holder's proportional part of any common shares that may be issued at any time by this corporation.

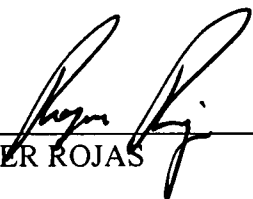
ARTICLE IX: ELECTION OF CLOSE CORPORATION STATUS

9.1. This corporation is a close corporation. The issued shares of this corporation of all classes shall be held of record by not more than thirty-five (35) persons.

EXECUTION

IN WITNESS WHEREOF, the undersigned initial Director(s) of this corporation have executed these Articles of Incorporation on this 30 day of June, 2003.

Director(s):



ROGER ROJAS



ADRIANA ROJAS

ACKNOWLEDGEMENT

I HEREBY DECLARE that I am the person(s) who executed the foregoing Articles of Incorporation, which execution is our act and deed.





ROGER ROJAS



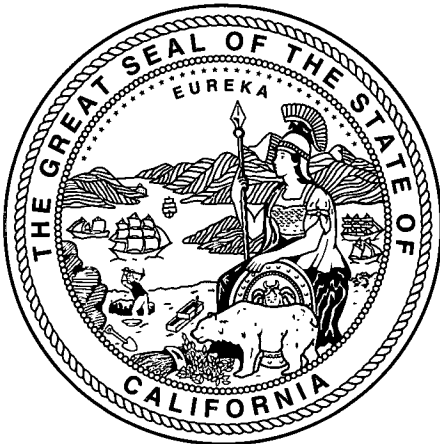
ADRIANA ROJAS



State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 24 2007

DEBRA BOWEN
Secretary of State

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION

JUL 19 2007

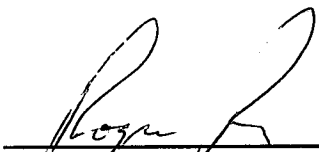
The undersigned certify that:

1. They are the president and the secretary, respectively, of Gold Shells, Inc., a California corporation, Secretary of State file no. 2545928.
2. Article One of the Articles of Incorporation of this corporation is amended to read as follows:


"1.1 The name of this corporation shall be Message In A Bottle, Inc."
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 10,000,000. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: July 10, 2007



Roger Rojas, President



Adrianna Rojas, Secretary



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No.: 78/229,875 Mark: MESSAGE IN A BOTTLE GOLD SHELLS, INC., a California corporation, Opposer, v. KEITH CANGIARELLA, Applicant.	Opposition No. 91162780 Cancellation No. _____
In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE KEITH CANGIARELLA, Petitioner, v. Gold Shells, Inc, Assignee	

**APPLICANT'S ANSWER TO
TO OPPOSER'S REQUEST FOR ADMISSIONS FROM APPLICANT**

Applicant, Keith Cangiarella ('Applicant'), for his answer to Opposer's Request for Admissions from Applicant regarding his application for registration of his trademark: MESSAGE IN A BOTTLE, Serial No. 78/229,875, filed on March 25, 2003 and published in the Official Gazette on June 29, 2004, filed by Opposer Gold Shells, Inc. (as the alleged assignee, and/or successor-in-interest of Registrant Roger Rojas).

PREFATORY STATEMENT

Applicant has not fully completed its investigation of facts relating to this case, has not fully completed its discovery in this action, and has not completed preparation for trial. All of the answers contained herein are based only upon such information and documents which are

presently available and specifically known, and disclose only those intentions which are presently known to Applicant. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establishing entirely new factual contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to Applicant's right to produce evidence of any subsequently discovered fact or facts which may later be developed. The answers contained herein are made in a good faith effort to supply as much factual information and as much specification as is presently known, which in no way is to be considered prejudicial in relation to further discovery, research, analysis or production of evidence.

These responses are made solely for the purpose of, and in relation to this action. Applicant does not waive in whole or in part the attorney-client privilege, work product protection, or any right of privacy or confidentiality provided for by law with respect to any matter whatsoever. In responding to this discovery, responding party will not undertake to provide any information protected by the attorney-client privilege or work product doctrine.

Applicant party does not concede the admissibility, relevance or materiality of the discovery or the subject matter referred to therein. Except for facts specifically admitted herein, no admission of any nature, whatsoever, it to be implied or inferred.

Each response is subject to all objections as to competency, relevancy, materiality, propriety, and admissibility, and any and all other objections and grounds that would require the exclusion of any document herein at trial. All such objections and ground are reserved.

RESPONSES

Applicant responds the answers as follows:

REQUEST NO. 1.: You use the Trademark for novelty, favor and souvenir bottles containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing.

RESPONSE NO. 1: Applicant admits that he uses the Trademark for such items among others.

REQUEST NO. 2: You use the Trademark for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others.

RESPONSE NO. 2: Denied.

REQUEST NO 3: Your pending application for registration of the Trademark with the U.S. Patent & Trademark Office, serial number 78/229875, has a filing date of March 25, 2003.

RESPONSE NO. 3: Applicant admits.

REQUEST NO. 4: On or before March 25, 2003, you had information that products and/or services featuring the Trademark had been sold in commerce by someone other than yourself.

RESPONSE NO. 4: Applicant admits.

REQUEST NO. 5: On or before March 25, 2003, you had noticed of the fact that an application to register the Trademark had previously been filed by someone other than yourself in the U.S. Patent & Trademark Office.

RESPONSE NO. 5: Applicant admits.

REQUEST NO. 6: On or before March 25, 2003, you had notice of the fact Roger Rojas had filed an application to register the Trademark in the U.S. Patent & Trademark Office.

RESPONSE NO. 6: Applicant admits.

REQUEST NO. 7: On and before March 25, 2003, you had notice of the fact that a registration had been issued for the Trademark by the U.S. Patent & Trademark Office to someone other than yourself.

RESPONSE NO. 7: Applicant admits.

REQUEST NO. 8: On or before March 25, 2003, you had notice of the fact that a registration had been issued for the Trademark to Roger Rojas by the U.S. Patent & Trademark Office.

RESPONSE NO. 8: Applicant admits.

REQUEST NO. 9: A registration for the Trademark was issued to Roger Rojas by the U.S. Patent & Trademark Office under registration number 2, 243,269 with an issue date of May 4, 1999.

RESPONSE NO. 9: On information and belief, Applicant admits.

REQUEST NO. 10: An application for registration of the Trademark was filed with the U.S. Patent & Trademark Office under the name Roger Rojas with a filing date of January 6, 1997, which was the basis for issuance of registration number 2,243,269 with an issue date of May 4, 1999.

RESPONSE NO. 10: Applicant denies on the basis that he has no independent knowledge or belief aside from the publicly available records, which speak for themselves.

REQUEST NO. 11: You claim use of the Trademark at least as early as March 10, 1998, anywhere and at least as early as June 10, 1998 in commerce.

RESPONSE NO. 11: Applicant admits.

REQUEST NO. 12: You do not claim use of Trademark prior to January 6, 1997.

RESPONSE NO. 12: Applicant denies.

REQUEST NO. 13: Your counterclaim for cancellation of Opposer's registration number 2,243,269 has a filing date of December 10, 2004 with the Trademark Trial & Appeal Board.

RESPONSE NO. 13: Applicant admits.

REQUEST NO. 14: You do business on the internet with the website addresses www.bottlemeamessage.com and www.dreamweaverstudios.com with your products and services.

RESPONSE NO. 14: Applicant admits

REQUEST NO. 15: You do business under the fictitious business name "Dream Weaver Studios."

RESPONSE NO. 15: Applicant admits.

ANDERSON & ASSOCIATES

Dated: August 12, 2005

By: 

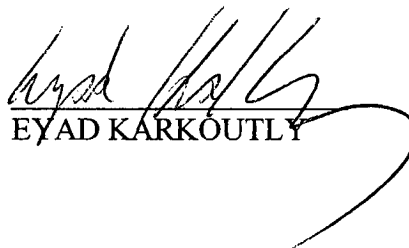
Stephen L. Anderson, Esq.
27349 Jefferson Avenue, Ste. 211
Temecula, CA 92590
(951) 719-1371

Attorneys for Applicant/Petitioner
KEITH CANGIARELLA

Certificate of Service

I hereby certify that a copy of the foregoing APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS was mailed first-class mail, postage prepaid, to Peter H. Smith, Attorney at law, 1535 J Street, Suite A, Post Office Box 1867, Modesto, California, 95353, attorney for Opposer,

August 12, 2005


EYAD KARKOUTLY

cc. Roger Rojas
4/11/06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No.: 78/229,875 Mark: MESSAGE IN A BOTTLE GOLD SHELLS, INC., a California corporation, Opposer, v. KEITH CANGIARELLA, Applicant.	Opposition No. 91162780 Cancellation No. _____
----- In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE KEITH CANGIARELLA, Petitioner, v. Gold Shells, Inc., Assignee	

**APPLICANT'S RESPONSES TO OPPOSER'S REVISED FIRST SET OF
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Applicant, Keith Cangiarella ("Applicant"), hereby responds to Opposer's Revised First Set of Interrogatories as follows:

PREFATORY STATEMENT

The following objections are given without prejudice to Applicant's right to later provide a substantive response to the interrogatories and/or to produce evidence of any subsequently discovered fact or facts which may later be developed. These objections are required in lieu of a response to the excessive number of interrogatories and should in no way be considered prejudicial in relation to further discovery, research, analysis or production of evidence.

These general objections are submitted instead of serving answers and specific objections to the interrogatories and are required by Chapter 400 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and specifically by 37 C.F.R. § 2.120(d)(1).

Applicant does not waive, nor intend to waive any particular objection to any specific interrogatory, nor does the Applicant waive, in whole or in part the attorney-client privilege, work product protection, or any right of privacy or confidentiality provided for by law with respect to any matter whatsoever. In raising these general objections, responding party will not undertake to provide any information protected by the attorney-client privilege or work product doctrine.

Applicant party does not concede the admissibility, relevance or materiality of the discovery or the subject matter referred to therein. Except for facts specifically admitted herein, no admission of any nature, whatsoever, it to be implied or inferred, the fact that any interrogatory has been answered should not be taken as an admission, or concession of the existence of any fact set forth or assumed by the interrogatory, or that the answer constitutes evidence of any facts thus set forth or assumed.

Each response is subject to all objections as to competency, relevancy, materiality, propriety, and admissibility, and any and all other objections and grounds that would require the exclusion of any document herein at trial. All such objections and ground are reserved.

GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories generally to the extent that they exceed the requirements and permissible scope of discovery under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Applicant objects to the Interrogatories generally to the extent that any interrogatories herein seek to require Applicant to identify documents or search for information or documents no longer in existence or not currently in Applicants' possession, custody or control, or to identify or describe persons, entities, or events not known to Applicant.

3. Applicant objects to the Interrogatories generally to the extent that they require Applicant to warrant that the information provided is exhaustive regardless of whether the requested information is within Applicant's control. Applicant will endeavor to provide discovery in good faith and consistent with the Federal Rules of Civil Procedure and Trademark Rules of Practice.

4. Applicant generally objects to the "Definitions" and "Instructions" contained in Opposer's interrogatories to the extent that they seek to impose obligations on Applicant beyond those set forth in the Federal Rules of Civil Procedure and the Trademark Rules of Practice, and to the extent that they unreasonably transform the ordinary meaning of the terms used therein, and that they further compound and convolute the interrogatories propounded by Opposer. In addition, such Definitions and Instructions are overbroad and seek to require more of Applicant than any obligation imposed by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, subject Applicant to unreasonable and undue annoyance, oppression, burden and expense. For such reasons, Applicant has not considered nor relied on any such "Definitions" or "Instructions" in framing these responses.

5. Applicant generally objects to the entire set of interrogatories to the extent that these interrogatories are unreasonable and excessive, cumulative to other discovery propounded by Opposer in this action, and further on the basis that Discovery had closed in this action long prior to the time in which this "revised" set was propounded and served on Applicant.

RESPONSES

Interrogatory No. 1: Identify each product marketed by you to date under the trademark.

Response to Interrogatory No. 1: Novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing. Applicant's products are further described at Applicant's website, www.bottlemeamessage.com and include the following goods: bottles, corks, sand, shells, boxes, cords, confetti, decorative cut-outs, parchment paper, wedding invitations, party invitations, personalized greetings, notes, notecards, promotional announcements, art prints and reproductions.

Interrogatory No. 2: Identify each service marketed by you to date under the Trademark.

Response to Interrogatory 2: Retail store services; Computerized on-line retail store services featuring novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing; Providing online facilities featuring transaction order entry, order directing and order confirmation services.

Interrogatory No. 3: Identify all discontinued goods that applicant previously identified with the Trademark.

Response to Interrogatory 3: None

Interrogatory No. 4: Identify all discontinued services that applicant previously identified with the Trademark.

Response to Interrogatory 4: None.

Interrogatory No. 5: As to any discontinued goods applicant previously identified with the Trademark, state when the use began.

Response to Interrogatory 5: Not applicable.

Interrogatory No. 6: As to any discontinued goods applicant previously identified with the Trademark, state when the use ended.

Response to Interrogatory 6: Not Applicable.

Interrogatory No. 7: As to any discontinued services applicant previously identified with the Trademark, state when the use began.

Response to Interrogatory 7: Not Applicable.

Interrogatory No. 8: As to any discontinued services applicant previously identified with the Trademark, state when the use ended.

Response to Interrogatory 8: Not Applicable.

Interrogatory No. 9: As to any discontinued goods applicant previously identified with the Trademark, identify why the goods were discontinued.

Response to Interrogatory 9: Not Applicable.

Interrogatory No. 10: As to any discontinued services applicant previously identified with the Trademark, identify why the services were discontinued.

Response to Interrogatory 10: Not Applicable.

Interrogatory No. 11: State the dollar value of Applicant's total sales of products identified with the Trademark for each year from 1998 through 2005

Response to Interrogatory 11: Applicant objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and cumulative to other discovery requests made by opposer herein and that such interrogatory seeks information that is not relevant to the issues in this Opposition. Applicant further objects to the extent that such interrogatory is harassing, oppressive and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein.

Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory violates the Applicant's rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and non-confidential materials which would require the production of commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor. Applicant further objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's sales volume goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance,

oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access.

Interrogatory No. 12: State the dollar value of Applicant's total sales of services identified with the Trademark for each year from 1998 through 2005

Response to Interrogatory 12:

Applicant objects to the extent that such interrogatory is harassing, oppressive and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory violates the Applicant's rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and non-confidential materials which would require the production of commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor. Applicant further objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's sales volume goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive

nature of certain documents requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. Notwithstanding and without waiver of said objections, Applicant further responds that he has not maintained any records which are independently related to the "sales of services", as apart from the sale of goods described in the response to Interrogatory No. 1 above.

Interrogatory No. 13: State the unit volume of Applicant's total sales of products identified with the Trademark for each year from 1998 through 2005.

Response to Interrogatory 13:

Applicant objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and cumulative to other discovery requests made by opposer herein and that such interrogatory seeks information that is not relevant to the issues in this Opposition. Applicant further objects to the extent that such interrogatory is harassing, oppressive and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory violates the Applicant's rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and non-confidential materials which would require the production of commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor.

Applicant further objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's sales volume goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain information requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. Notwithstanding and without waiver of said objections, Applicant further responds that the following are estimated annual volumes of total products sold in conjunction with the Trademark:

1998 – 2562 total products; 1999 – 3869 total products; 2001 – 4823 total products; 2002 - 5114 total products; 2003 - 8668 total products; 2004 – 23269 total products; 2005 – 38497 total products; January – August 2005 (discovery closed Sep. 30th) - 44067 total products.

Interrogatory No. 14: State the unit volume of Applicant's total sales of services identified with the Trademark for each year from 1998 through 2005.

Response to Interrogatory 14: Applicant objects to the extent that such interrogatory is harassing, oppressive and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action.

Applicant further objects as the information sought under such interrogatory violates the Applicant's rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and non-

confidential materials which would require the production of commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor. Applicant further objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's sales volume goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain information requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. Notwithstanding and without waiver of said objections, Applicant further responds that he has not maintained any records which are independently related to the "sales of services", as apart from the sale of goods described in the response to Interrogatory No. 1 above.

Interrogatory No. 15: Have you distributed goods identified with the Trademark through any other persons?

Response to Interrogatory 15: No not directly. However, Applicant has on occasion sold to bulk volumes of products identified with the Trademark to third parties who may have thereafter redistributed such products.

Interrogatory No. 16: If your answer to interrogatory number 15 is "yes", identify each other person through whom you have distributed goods identified with the Trademark.

Response to Interrogatory 16: Not Applicable.

Interrogatory No. 17: Identify the channels of trade for the sale of your products identified with the Trademark

Response to Interrogatory 17: Internet sales, retail sales, catalog sales, commercial advertisements in magazines, newspapers, brochures and flyers, direct mail, telephone sales, and at trade shows and events.

Interrogatory No. 18: Identify the channels of trade for the sale of your services identified with the Trademark

Response to Interrogatory 18: Please refer to the response to Interrogatory No. 12 above.

Interrogatory No. 19: State the geographic area in which your products identified with the Trademark have been sold

Response to Interrogatory 19: Worldwide, without limitation.

Interrogatory No. 20: State the geographic area in which your services identified with the Trademark have been sold.

Response to Interrogatory No. 20: Services are not sold but are provided only ancillary to sales of products worldwide. Applicant further incorporates herein his response to Interrogatory No. 12 above.

Interrogatory No. 21: Identify the class of consumers to whom your products identified with the Trademark have been sold.

Response to Interrogatory No. 21: All consumers, including individuals, families, commercial entities and merchants without any limitation.

Interrogatory No. 22: Identify the class of consumers to whom your services identified with the Trademark have been sold.

Response to Interrogatory No. 22: Services are not sold but are provided only ancillary to sales of products worldwide. Applicant further incorporates herein his response to Interrogatory No. 12 above.

Interrogatory No. 23: Identify all advertising media which you have advertised your products identified with the Trademark

Response to Interrogatory No. 23: Applicant objects to this interrogatory on the grounds that it is vague and ambiguous as to “advertising media” and further objects on grounds that cumulative to other discovery requests made by opposer herein and that such interrogatory seeks information that is not relevant to the issues in this Opposition. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory violates the Applicant’s rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and non-confidential materials which would require the production of commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor. Applicant further objects on the grounds that as a competitor of Applicant,

Opposer's interests in obtaining Applicant's advertising media used to promote his goods and services goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain information requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. Notwithstanding and without waiver of said objections, Applicant further responds as follows:

On the Internet at www.bottlemeamessage.com, via third party pay per click advertisers (e.g., Overture, Yahoo Search Marketing, Google Adwords etc.), via Internet search engines, via retail outlet, on banners and signage, business cards, flyers, brochures, direct mail letters, on catalogs, via commercial advertisements in magazines, newspapers, and other printed publications, and at trade shows and events. Numerous examples have been previously provided to Opposer within Applicant's production of documents made heretofore in this action.

Interrogatory No. 24: Identify all advertising media which you have advertised your services identified with the Trademark

Response to Interrogatory No. 24: Applicant hereby incorporates by reference his response to the preceding interrogatory No. 23.

Interrogatory No. 25: Have you received an opinion concerning possible trademark conflicts arising out of the use of the Trademark by Opposer?

Response to Interrogatory 25: Applicant objects to this interrogatory on the grounds that it is vague and ambiguous as to what an “opinion concerning possible trademark conflicts arising out of the use of the Trademark by Opposer ” is or would be. Applicant further objects on grounds that the interrogatory calls for information not relevant to this proceeding nor likely to lead to the discovery of admissible evidence herein. Applicant further objects on the grounds that it calls for a legal conclusion and/or calls for attorney/client communications and/or privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant further responds as follows: No: Any opinion as to any possible trademark infringement by Opposer would have been made verbally by Applicant’s counsel to Applicant and no records concerning same are available to Applicant at this time.

Interrogatory No. 26: If your answer to interrogatory number 25 is “yes” state the dates upon which each opinion was received concerning possible trademark conflict arising out of the use of the Trademark by Opposer.

Response to Interrogatory 26: Applicant hereby incorporates by reference his response to Interrogatory Number 25 above.

Interrogatory No. 27: If your answer to interrogatory number 25 is “yes”, identify the persons whom opinions were received concerning possible trademark conflict arising out of the use of the Trademark by Opposer.

Response: Applicant believes that he has discussed possible infringements by Opposer with the undersigned counsel, but no formal or written opinion has ever been received.

Interrogatory No. 28: Have you ever received any communication intended for Opposer?

Response : No. Applicant has not received any communication intended for Opposer.

Interrogatory No. 29: If your answer to interrogatory number 28 is “yes”, state the dates on which you received each communication intended for Opposer.

Response: Not applicable.

Interrogatory No. 30: If your answer to interrogatory number 28 is “yes”, state the nature of each communication you received which was intended for Opposer.

Response: Not applicable.

Interrogatory No. 31: If your answer to interrogatory number 28 is “yes”, identify each person who initiated a communication intended for Opposer.

Response: Not applicable.

Interrogatory No. 32: Have you ever received any communication inquiring as to whether there was a relationship between you and the Opposer?

Response : No.

Interrogatory No. 33: If your answer to interrogatory number 32 is “yes”, state the dates on which you received communication inquiring as to whether there was a relationship between you and Opposer.

Response : Not applicable.

Interrogatory No. 34: If your answer to interrogatory number 32 is “yes”, identify each person whom you received communication inquiring as to whether there was a relationship between you and Opposer.

Response : Not applicable.

Interrogatory No. 35: When did you first learn of the use of the Trademark by Roger Rojas?

Response : Applicant objects to this interrogatory on the grounds that it is vague and ambiguous as to “use of the Trademark by Roger Rojas.” Applicant further objects inasmuch as the interrogatory calls for a legal conclusion as to what constitutes “use of the Trademark by Roger Rojas” which remains a disputed contention of fact herein.

Interrogatory No. 36: Under what circumstances did you first learn of the use of the Trademark by Roger Rojas?

Response to No. 36: Applicant incorporates by reference his response to the preceding Interrogatory No. 35.

Interrogatory No. 37: When did you first learn of use of the Trademark by Gold Shells, Inc.

Response: Applicant objects to this interrogatory on the grounds that it is vague and ambiguous as to “use of the Trademark by Gold Shells, Inc.” Applicant further objects inasmuch as the interrogatory calls for a legal conclusion as to “use of the Trademark by Gold Shells, Inc. ” which remains a disputed contention of fact herein. Notwithstanding and without waiver of said objections, or about November 03, 2005, Applicant learned that Gold Shells, Inc. had filed the

instant opposition proceeding and that it claimed therein to have been the owner, by alleged assignment of Trademark Registration No. 2,242,269.

Interrogatory No. 38: Under what circumstances did you first learn of use of the Trademark by Gold Shells, Inc.

Response to Interrogatory 38: Applicant objects to this interrogatory on the grounds that it is vague and ambiguous as to “use of the Trademark by Gold Shells, Inc.” Applicant further objects inasmuch as the interrogatory calls for a legal conclusion as to “use of the Trademark by Gold Shells, Inc. ” which remains a disputed contention of fact herein. Notwithstanding and without waiver of said objections, by way of contentions made by Opposer as submitted in responses to discovery which were received by Applicant in or around October of 2005.

Interrogatory No. 39: State the dollar amount you have spent annually on advertising in connection with the Trademark during each of the last five years.

Response : Applicant objects to this Interrogatory it is compound, unduly burdensome, oppressive, and/or seek information that is not relevant to the matters at issue in this Opposition proceeding. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory violates the Applicant’s rights of privacy as afforded to him under the California Constitution and Federal law. Moreover, Applicant objects on grounds that the interrogatory seeks confidential and commercially and competitively sensitive information which should not be produced without the protection of an Order restricting access from Opposer, a direct competitor. Applicant further

objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's costs of advertising used to promote his goods and services goes well beyond any matter of fact to be raised in the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain information requested, Applicant will not further respond to this interrogatory unless Opposer makes some preliminary explanation of relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. Notwithstanding and without waiver of said objections, Applicant further responds as follows: Applicant averages approximately \$5,000 - \$30,000 per year for advertising.

Interrogatory No. 40: Identify all persons other than Opposer and Roger Rojas with whom you have had a dispute regarding use of Trademark.

Response : Applicant objects to this Interrogatory it calls for a legal conclusion as to what is a "dispute regarding use of the Trademark." Applicant further objects to the extent that such interrogatory is overly broad, unduly burdensome, oppressive, and/or seeks information that is not relevant to the issues in this Opposition. Applicant further objects on the basis that the interrogatory seeks information and details which are of minimal, if any, evidentiary value in determining the issues in this action. Notwithstanding and without waiver of said objections, Applicant further responds as follows: the respective representatives and/or owners of the following websites: ebottles.com, sandartsupplies.com, marketinginabottle.com, Google.com and Overture.com.

Interrogatory No. 41: Did you view the internet website www.messageinabottle.com prior to March 25, 2003?

Response: Applicant has no records to suggest that he had viewed the website associated with the Internet domain name www.messageinabottle.com at any time prior to the date of March 25, 2003. Applicant further has no independent recollection as to the specific date in which he first viewed the website appearing at such URL.

Interrogatory No. 42: Did you apply for the internet website address www.messageinabottle.com?

Response to No. 42: No.

Interrogatory No. 43: If your answer to interrogatory 42 is "yes" when did you apply for the internet website address www.messageinabottle.com

Response: Not Applicable.

Interrogatory No. 44: If your answer to interrogatory 42 is "yes" what was the result of your application for the internet website address www.messageinabottle.com?

Response: Not applicable.

Interrogatory No. 45: What is the basis for your denying Opposer is the owner of service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in class 38 for receiving

communications from others, recording such communications in written or printed form, and transmitting such communications to others?

Response: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant does not presently deny that Opposer is the owner by way of assignment of service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others. However at the time that the Applicant had approved the draft of Applicant's Answer To Notice of Opposition and Counterclaim, Applicant had no information or belief which would suggest that such assignment had ever occurred.

Interrogatory No. 46: What is the basis for your denying that registration no 2,243,269 is valid?

Response: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Without waiver of said objections, Applicant responds, in part, as follows: Applicant hereby refers to Applicant's Answer To Notice of Opposition and Counterclaim, as well as the documents produced by Opposer in discovery in this action. In sum, Applicant has no information that would suggest that Opposer or its predecessor has ever engaged in any services

that could properly or legally be characterized as telecommunications services or which would otherwise be properly classified within International Class 038. As such, Applicant is informed and believes that Opposer's predecessor has perpetrated a fraud on the USPTO and that the resulting registration is thusly invalid and must be cancelled.

Interrogatory No. 47: What is the basis for your denying that the Trademark as used by the Applicant so resembles the Trademark as registered by Opposer as to be likely to cause confusion?

Response to Interrogatory No. 47: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant relies on the following documents: Examiner's Office Action by Kelley L. Wells re: Application Ser. No. 78/229875 dated: 10/8/03 4:44:16 PM; Notice Of Publication Under 12(A) re: Application Ser. No. 78/229875 dated June 09, 2004; XSearch Search Summary re: Application Ser. No. 78/229875 Dated: 08-Oct-2003 by Kelley L. Wells; All documents related to Registration No. 2,243,269 on file at the USPTO; various documents produced in discovery by Opposer herein. Applicant also relies on the nature of goods and services as described in Registration No. 2,243,269 asserted by Opposer.

Interrogatory No. 48: What is the basis for your denying that since January 16, 1999, Opposer has been actually using Trademark in connection with sale of goods identical to some of the goods set forth in Applicant's application?

Response No. 48: Current records of the California Secretary of State show that Opposer was not even in existence nor formally incorporated until July 07, 2003. In addition, Applicant relies in part on the records of the USPTO related to Application Ser. No. 76/556304 filed by Roger Rojas on November 3, 2003 as well as certain documents produced by Opposer in discovery herein, particularly including the following: Opposer's purported License Agreement dated July 7, 2003; Action of Unanimous Written Consent of Board of Directors.. dated July 7, 2003; Unanimous Written Consent of Directors approving resolution dated October 5, 2004.

Interrogatory No. 49: What is the basis for your denying that under Section 7(c) of the Lanham Act, Opposer has a priority right to the Trademark through constructive use based on the filing date of its predecessor's original intent-to-use service mark application?

Response 49: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant contends that Opposer's alleged predecessor Roger Rojas' application and subsequent registration no 2,243,269 were procured only as the result of fraud and fraudulent statements as alleged in the Applicant's Answer and Cross-Complaint on file herein. Inasmuch as Mr. Rojas never had any bona fide intent to use the Trademark in connection with telecommunications services in International Class 038, any "constructive priority" based on such filing is void.

Interrogatory No. 50: What is the basis for your denying that the services for which Opposer's mark was registered are related to the goods for which Applicant's application has been published for opposition?

Response : Applicant objects to this Interrogatory it is ambiguous and unintelligible.

Applicant further objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege.

Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant relies on the following documents: Examiner's Office Action by Kelley L. Wells re: Application Ser. No. 78/229875 dated: 10/8/03 4:44:16 PM; Notice Of Publication Under 12(A) re: Application Ser. No. 78/229875 dated June 09, 2004; XSearch Search Summary re: Application Ser. No. 78/229875 Dated: 08-Oct-2003 by Kelley L. Wells; All documents related to Registration No. 2,243,269 on file at the USPTO; All records on file at the USPTO related to Application Ser. No. 76/556304 filed by Roger Rojas on November 3, 2003; Various documents produced in discovery by Opposer herein. Applicant also relies on the nature of goods and services as described in Registration No. 2,243,269 asserted by Opposer;

Interrogatory No. 51: What is the basis for your denying that you use the Trademark on services which are identical to those for which Opposer has registered the Trademark?

Response No. 51: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant incorporates by

reference herein his response to interrogatory no. 2 above and further relies on the following documents: All documents related to Registration No. 2,243,269 on file at the USPTO; various documents produced in discovery by Opposer herein. Applicant also relies on the nature of goods and services as described in Registration No. 2,243,269 asserted by Opposer. records of the USPTO related to Application Ser. No. 76/556304 filed by Roger Rojas on November 3, 2003 as well as certain documents produced by Opposer in discovery herein. In addition, Examiner's Office Action by Kelley L. Wells re: Application Ser. No. 78/229875 dated: 10/8/03 4:44:16 PM; Notice Of Publication Under 12(A) re: Application Ser. No. 78/229875 dated June 09, 2004; XSearch Search Summary re: Application Ser. No. 78/229875 Dated: 08-Oct-2003 by Kelley L. Wells; All documents related to Registration No. 2,243,269 on file at the USPTO; All records on file at the USPTO related to Application Ser. No. 76/556304 filed by Roger Rojas on November 3, 2003; Various documents produced in discovery by Opposer herein. Applicant also relies on the nature of goods and services as described in Registration No. 2,243,269 asserted by Opposer;

Interrogatory No. 52: What evidence do you have to support your affirmative defense that Opposer lacks any standing to bring this opposition?

Response to Interrogatory No. 52: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant relies on the records of the purported assignment related to Registration No. 2,243,269 asserted by Opposer.

Interrogatory No. 53: What evidence do you have to support your affirmative defense that Opposer is barred by equitable grounds from bring its opposition.

Response: Applicant hereby incorporates his response to interrogatory Nos. 46 and 49 above.

Interrogatory No. 54: What evidence do you have to support your affirmative defense that Opposer's claims are barred due to fraudulent conduct attributable to Opposer?

Response : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his response to interrogatory No. 49 above.

Interrogatory No. 55: What evidence do you have that Opposer has not used the Trademark on services an identification of origin of those goods and services identified in the Notice of Allowance for Opposer's registration no. 2,243,269?

Response No. 54 : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Applicant further objects inasmuch as the interrogatory seeks Applicant to prove a negative pregnant. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his response to interrogatory No. 49 above.

Interrogatory No. 55: What evidence do you have to support your affirmative defense that the Opposer has not used the Trademark any services that may be properly characterized as within International Class 38?

Response : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Applicant further objects inasmuch as the interrogatory seeks Applicant to prove a negative pregnant. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his response to interrogatory No. 49 above and further relies on the Trademark Acceptable Identification of Goods & Services Manual as promulgated by the USPTO; The Telecommunications Act of 1996, 47 U.S.C. 153(43); Common dictionary definitions as related to the term "Telecommunications" particularly including *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*; the *On-line Medical Dictionary*, © 1997-98 Academic Medical Publishing & CancerWEB; the encyclopedia article on "telecommunications" by Crystal Reference Encyclopedia, © Crystal Reference Systems Limited 2006; *The World Trade Organization's* Annex on telecommunications (http://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm); and certain documents and items as were previously produced by the Applicant and/or the Opposer in discovery herein.

Interrogatory No. 56: What evidence do you have to support your affirmative defense that Opposer has not used Trademark on any services that may be properly characterized as within International Class 38?

Response No. 56: Applicant hereby incorporates by reference herein his response to the preceding interrogatory No. 55 above.

Interrogatory No. 57: What evidence do you have to support your affirmative defense that any use of the Trademark other than for the specific services identified in the Notice of Allowance for Opposer's registration no 2,243,269 would not lead to a likelihood of confusion?

Response No. 57: Applicant hereby objects to this interrogatory on the grounds that it is vague, ambiguous and compound. Applicant further objects inasmuch as the interrogatory suggests contentions or assertions which were not clearly made by the Applicant herein. Applicant further objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product.

Interrogatory No. 58: What evidence do you have to support your allegation that Opposer fraudulently obtained its registration for the Trademark?

Response: Applicant hereby incorporates by reference his respective objections and responses to interrogatories numbered 49 and 55 above.

Interrogatory No. 59: What evidence do you have to support your allegation that Opposer's predecessor, Roger Rojas, provided misleading description of the services covered by his application for registration of the Trademark?

Response No. 59: Applicant hereby incorporates by reference his respective objections and responses to interrogatories numbered 49 and 55 above.

Interrogatory No. 60: What evidence do you have to support your allegation that Roger Rojas knew or should have known that you had used the Trademark at least as early as March 10, 1998?

Response : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his Answer and Counterclaim on file in this action, and further responds as follows: due to Applicant's prior and ongoing Internet presence, via his wwebsite, his search engine directory listings, his Alexa ranking and his prior and continuous pay-per-click advertising re: same.

Interrogatory No. 61: What evidence do you have to support your allegation that the representations made in Roger Rojas' statement of use as submitted to the U.S. Patent & Trademark Office on or about January 28, 1999, were made by Roger Rojas with the knowledge that said statement was false?

Response No. 61 : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Applicant further objects inasmuch as the interrogatory is vague and suggests contentions or assertions which were not clearly made by the Applicant herein. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his

Answer and Counterclaim on file in this action, as well as his responses to interrogatories numbered 49 and 55 above.

Interrogatory No. 62: What evidence do you have to support your allegation that the first use of the Trademark as alleged in the application of Roger Rojas with the U.S. Patent & Trademark office was not rendered in interstate commerce as alleged?

Response No. 62: Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his Answer and Counterclaim on file in this action, as well as his responses to interrogatories numbered 49 and 55 above.

Interrogatory No. 63: What evidence do you have to support your allegation that the registrant of registration no 2,243,269 for the Trademark abandoned the Trademark?

Response : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Applicant further objects inasmuch as the interrogatory is vague and suggests contentions or assertions which were not clearly made by the Applicant herein. Notwithstanding and without waiver of said objections, Applicant hereby incorporates by reference herein his Answer and Counterclaim on file in this action, as well as his responses to interrogatories numbered 49, 52 and 55 above.

Interrogatory No. 64: What evidence do you have to support your allegation that Opposer failed to disclose to the U.S. Patent & Trademark known uses of the Trademark by others?

Response : Applicant objects to the extent that this interrogatory calls for a legal conclusion and/or that it seeks information and communications protected by the attorney/client privilege. Applicant further objects inasmuch as a response would call for privileged attorney work product. Applicant further objects inasmuch as the interrogatory is vague and suggests contentions or assertions which were not clearly made by the Applicant herein. Notwithstanding and without waiver of said objections: Opposer's response to interrogatory No. 12 as propounded by Applicant; Opposer's document production No. 3: Thomson & Thomson Report dated November 18, 1996.

Dated: April 5, 2006

ANDERSON & ASSOCIATES


By: 

Stephen L. Anderson, Esq.
32605 Highway 79 South, Suite 208
Temecula, CA 92592
(951) 694-1877
Attorneys for Applicant/Petitioner
KEITH CANGIARELLA

Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S REVISED FIRST SET OF INTERROGATORIES** was mailed first-class mail, postage prepaid, as addressed to: Peter H. Smith, Attorney at law, 1535 J Street, Suite A, Post Office Box 1867, Modesto, California, 95353, attorney for Opposer.

Dated: 4/7/06, 2006


Kristina Harrell